

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL A. MCGOWAN,

Defendant-Appellant.

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UNPUBLISHED

January 10, 2003

No. 232899

Genesee Circuit Court

LC No. 99-004382-FC

Before: Meter, P.J., and Saad and R.B. Burns\*, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim under thirteen years old), and one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (victim under thirteen years old). The trial court, applying a second-offense habitual offender enhancement under MCL 769.10, sentenced him to life imprisonment for each of the CSC I convictions and to 180 to 270 months' imprisonment for the CSC II conviction. We affirm.

Defendant contends that the trial court imposed disproportionately harsh sentences for the CSC I convictions. We disagree. Because the instant offenses occurred in 1997, the legislative sentencing guidelines did not apply; instead, the judicial sentencing guidelines and their accompanying case law applied. See MCL 769.34(1) and *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). When the judicial sentencing guidelines are involved, this Court reviews the sentence imposed on an habitual offender for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997); *Reynolds, supra* at 252. As noted in *Hansford, supra* at 326,

. . . a trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society.

CSC I is punishable by "imprisonment in the state prison for life or for any term of years." MCL 750.520b(2). Defendant's sentence fell within that limit. Moreover, he has demonstrated an inability to conform his conduct to the laws of society by virtue of (1) his prior

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

felony conviction for voluntary manslaughter, which resulted from a plea agreement after he had originally been arrested for first-degree murder,<sup>1</sup> and (2) the extremely serious nature of the instant offenses, which involved oral and vaginal penetration and anal sexual contact with a ten-year-old girl.<sup>2</sup> Under these circumstances, no abuse of discretion occurred.<sup>3</sup>

Defendant also contends that the trial court erred by denying his motion for a directed verdict of acquittal with regard to CSC I because there was insufficient evidence of penetration.

When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. [*People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).]

The convictions here were adequately supported by the victim's testimony,<sup>4</sup> as well as by the evidence of defendant's semen on a nightshirt allegedly worn by the victim on the night in question and by evidence of tears and contusions in the area between the victim's vagina and anus.<sup>5</sup> The evidence was sufficient to permit a rational trier of fact to find beyond a reasonable doubt that defendant committed the crimes in question. Accordingly, the trial court properly denied defendant's motion for a directed verdict.

Affirmed.

/s/ Patrick M. Meter  
/s/ Henry William Saad  
/s/ Robert B. Burns

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<sup>1</sup> Apparently, defendant was paid five dollars to drive an acquaintance to a woman's home, where the acquaintance shot and killed the woman.

<sup>2</sup> Defendant also incurred three misdemeanor convictions during his probationary period for manslaughter and an additional misdemeanor conviction after his probationary period. These convictions further evidence his inability to conform his conduct to the laws of society.

<sup>3</sup> Moreover, defendant was sentenced within the guidelines for the underlying offense. Accordingly, his sentence was presumptively proportionate. See *People v Rice (On Remand)*, 235 Mich App 429, 447; 597 NW2d 843 (1999), and *People v Beneson*, 192 Mich App 469, 470-471; 481 NW2d 799 (1992). Defendant has established no "unusual circumstances" to overcome the presumption that the sentence was proportionate. See *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994), and *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992).

<sup>4</sup> Under MCL 750.520h, the testimony of a victim need not be corroborated in a prosecution for CSC I or CSC II.

<sup>5</sup> Contrary to defendant's suggestion on appeal, none of the physical evidence conclusively exonerated him. For example, even though the victim's hymen was intact after the incident, a physician testified that "[t]he hymen is not always torn in penetration."